

LAW OFFICES OF VINCENT E. BAUER

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New York, NY 10017**

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Vincent E. Bauer
Barbara Meister Cummins

VIA ECF

March 14, 2023

Hon. James L. Cott
U.S. Magistrate Judge
United States Courthouse
500 Pearl St.
New York, NY 10007-1312

Subject: Acosta v. Food Universe Marketplace et ano, 21 cv 10147

Dear Judge Cott:

The Plaintiff in this action, along with Defendants, jointly request that your Honor approve the settlement reached in this matter. A copy of the signed settlement agreement is filed herewith.

Plaintiff claims he was a former grocery bagger and delivery person with the corporate Defendant. Plaintiff sued for unpaid wages under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. 201, et seq. and the New York Labor Law ("NYLL"). Defendants claim that Plaintiff never worked for them and is only resolving this matter to avoid the uncertainty of future litigation and the time and expense associated with same.

There was essentially one contested issue in this case – whether Plaintiff worked for Defendants every day with limited exception for three years, or not at all.

There is also a factual dispute concerning the number of hours actually worked by him for which Plaintiff was unpaid. There are no punch clock records or other company records concerning Plaintiff. Given Defendants' position, Plaintiff contends that they would be vulnerable on the issue of hours worked if it were determined that Plaintiff worked for Defendants at all. However, Plaintiff's assertion that he worked 12 hours per day, seven days per week for 3 years without pay may be subject to real scrutiny from the Court if there were a trial in this matter.

Plaintiff believes that, if he were to prevail on his claims, inclusive of notice damages and liquidated damages, the total award amount would be approximately \$550,000. If Defendants prevailed on their defenses, Plaintiff would be entitled to nothing.

The settlement agreement provides that Plaintiff will receive a total of \$225,000 to settle his wage and hour claims (minus applicable taxes and withholdings), and that that amount will be allocated as follows: Plaintiff will receive a total of \$147,024; and (2) Plaintiff's counsel will receive \$77,976, including \$4,500 in reimbursed expenses. The foregoing settlement was reached after protracted settlement discussions and with the great assistance of your Honor.

Court approval of an FLSA settlement is appropriate "when [the settlement] [is] reached as a result of contested litigation to resolve bona fide disputes." *Johnson v. Brennan*, No. 10-cv-471, 2011 WL 4357376, at * 12 (S.D.N.Y. Sept. 16, 2011). "If the proposed settlement reflects a reasonable compromise over contested issues, the court should approve the settlement." *Id.* (citing *Lynn's Food Stores, Inc. v. United States*, 679, F.2d 1350, 1353 n. 8 (11th Cir. 1982)).

The settlement agreement reached by the parties is fair. Although Plaintiff's recollections of his hours worked are sufficient to prove the hours that he worked, *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 687 (1946), superseded by statute, Portal-to Portal Act of 1947, 29 U.S.C. §216(b) (2006), as recognized in *Gorman v. Consol. Edison Corp.*, 488 F.3d 586, 590 (2d Cir. 2007), his recollection is not binding on the fact finder. Given Plaintiff's interest in the outcome of this matter, it is probable that the fact finder would apply some discount factor to his claimed hours. It is also possible that the fact finder would conclude that Plaintiff did not work for Defendants at all, given that five of Defendants' employees and the individual Defendant have all sworn that Plaintiff never worked for Defendants.

The settlement provides, with certainty, that Plaintiff will receive nearly all of his alleged unpaid wages. If Defendants' defense is given credence, Plaintiff would recover nothing. Given the sharp divisions in the parties' version of events, the fact that several trial witnesses would have an interest in the outcome, and the limited documentary evidence available, this range of recovery is reasonable. The fact that the matter is being resolved by way of settlement also eliminates the burden and uncertainty of collection proceedings.

Given the conflicting evidence, the quality of the evidence and counsel and the allocation of the burden of proof on Plaintiff, the settlement represents a reasonable compromise with respect to contested issues.

We also believe that the amount of the settlement monies payable to Plaintiff's counsel is reasonable. In that regard, I have expended 85 hours in connection with this action. See accompanying time records). Applying my usual \$650 per hour fee rate to that total would result in fees of \$55,250. My paralegals who worked on this case worked 19 and 12 hours, respectively (see accompanying time records). Additionally, I incurred a private investigator expense of \$960. See accompanying invoice. Accordingly, the parties jointly request approval of the settlement agreement. See *Reyes v. Altamarea Group, LLC*, 10-cv-6451 (RLE), 2011 WL

4599822 at * 6 (S.D.N.Y. Aug. 16, 2011) (Ellis, M.J.).

Respectfully submitted,

s/

Vincent E. Bauer

Vincent Bauer

<u>DATE</u>	<u>DESCRIPTION</u>	<u>HOURS</u>
10-11	Conduct research; prepare complaint	.7
10-12	Teleconference regarding spreadsheet	.5
11-29	Prepare complaint	.7
11-30	Prepare summons, cover sheet; file documents	.6
12-7	Teleconference with client	.4
12-8	File agreements	.4
12-20	Witness interview; prepare declarations; prepare documents for service	1.3
12-21	Attention to declaration	.4
2-21	Teleconference with counsel; prepare for same	.6
2-23	Teleconference with JA	.5
3-14	Review texts	.7
3-16	Teleconference with A. Mitre	.3
3-28	Prepare joint letter; review declarations	.9
4-13	Prepare discovery requests	.8
5-9	Teleconference with client	.6
5-13	Review protective order	.3
6-13	Review document production, responses	.7
6-20	Teleconference regarding discovery	.4
6-23	Teleconference, emails with counsel regarding discovery	.5
7-15	Attention to deposition scheduling	.3
7-20	Attention to discovery	.3
8-1	Emails regarding depositions	.2
8-8	Attention to discovery extension, depositions	.7
8-9	Teleconference with counsel regarding depositions	.3

8-15	Attention to depositions	.9
8-19	Prepare subpoenas, deposition notices	1.2
8-31	Attention to subpoena issues	.6
9-15 ;	Visit Food Universe	2.2
9-19	Prepare subpoenas and letters	.9
9-30	Attention to depositions	.5
10-5	Attention to depositions	.7
10-10	Prepare for depositions; teleconferences regarding same	1.3
10-11	Witness preparation; prepare for Lopez deposition	2.9
10-12	Deposition; prepare for, travel to/from same	8.8
10-13	Attention to settlement; teleconferences with witnesses; Prepare letter to court	1.3
10-14	Prepare declarations	.8
10-17	Attention to witness issues	1.1
10-18	Attention to witness issues	.4
10-19	Attention to witness, deposition issues	1.2
10-20	Prepare declaration; attention to witness issues; review Discovery requests; teleconference with BC	2.1
10-21	Attention to discovery, witnesses; prepare second document requests	.9
10-24	Attention to discovery issues; prepare for deposition	1.1
10-25	Conduct depositions; discovery preparation	3.4
10-26	Teleconferences regarding declarations, witnesses	.7
10-27	Attention to witness issues	.8
10-31	Deposition preparation	2.1
11-1	Deposition preparation	3.4
11-2	Conduct depositions	4.4

11-4	Attention to witness interviews	.8
11-7	Extended teleconferences with reporter, DK re witness issues Witness interviews	4.4
11-8	Attention to witness issues	.4
11-9	Teleconferences regarding investigation; email to M. Rojas	.8
11-10	Teleconference with investigators, MR	.6
11-11	Attention to J. Mateo issues	.8
11-14	Prepare subpoenas, declarations	1.6
11-15	Teleconferences with counsel, investigator, M. Rojas	.7
11-18	Teleconference regarding witnesses	.4
11-21	Teleconferences with investigator	.4
11-22	Prepare mediation statement	2.6
11-23	Finalize mediation statement; prepare exhibits	1.6
11-29	Prepare for court conference	1.2
11-30	Settlement conference; travel to/from same	3.1
12-5	Attention to discovery issues	.4
12-6	Emails, teleconferences regarding settlement, discovery	.4
12-7	Teleconferences, emails regarding discovery issues	.5
12-8	Extended teleconference with counsel	1.1
12-9	Teleconference with JA	.4
12-10	Prepare letter to court	.8
12-15	Attention to settlement	.9
12-15	Attention to settlement	.3
12-19	Teleconferences regarding settlement	.6
1-3	Attention to settlement	.3
1-5	Emails regarding settlement, discovery; prepare court letter	.8

1-6	Review discovery; attention to settlement	.8
1-12	Teleconference with Court; prepare for same	.9
2-8	Prepare Cheeks application	.9
Total hours		<hr/> 85.5

Activities Export

Alicia Mitre

02/08/2023
4:07 PM

Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
11/30/2022		Paralegal Fees - Alicia: Attending Settlement Conference to translate. The defendants offered \$15k, didn't settle. We are going to trial. ● Unbilled	00387-Acosta Acosta v. Food Universe Marketplace	Paralegal User	2.50h	\$165.00	-	\$412.50
11/14/2022		Paralegal Fees - Alicia: Translating subpoenas and declarations for Zenon and Justiniano. ● Unbilled	00387-Acosta Acosta v. Food Universe Marketplace	Paralegal User	0.50h	\$165.00	-	\$82.50
10/19/2022		Paralegal Fees - Alicia: Call with Juan Perez and Elvira to ask about dates for depositions. ● Unbilled	00387-Acosta Acosta v. Food Universe Marketplace	Paralegal User	0.10h	\$165.00	-	\$16.50
10/19/2022		Paralegal Fees - Alicia: Call with Mr. Nicolas ● Unbilled	00387-Acosta Acosta v. Food Universe Marketplace	Paralegal User	0.04h	\$165.00	-	\$6.60
10/19/2022		Paralegal Fees - Alicia: Call with Mr. Juan Perez, he had questions about his declaration. ● Unbilled	00387-Acosta Acosta v. Food Universe Marketplace	Paralegal User	0.05h	\$165.00	-	\$8.25
10/17/2022		Paralegal Fees - Alicia: Drafting Flyer ● Unbilled	00387-Acosta Acosta v. Food Universe Marketplace	Paralegal User	0.59h	\$165.00	-	\$97.35
10/17/2022		Paralegal Fees - Alicia: Translating flyer text ● Unbilled	00387-Acosta Acosta v. Food Universe Marketplace	Paralegal User	0.17h	\$165.00	-	\$28.05
09/30/2022		Paralegal Fees - Alicia: Informing	00387-Acosta	Paralegal	0.09h	\$165.00	-	\$14.85

12.23h

\$0.00

\$1,980.90








0.00h

12.23h

1/4

Activities Export

02/08/2023
4:07 PM

Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
09/19/2022		the client about employee depositions, Mr. Acosta will be there. ● Unbilled	Acosta v. Food Universe Marketplace	User				
		Paralegal Fees - Alicia: Translating cover letter ● Unbilled	00387-Acosta Acosta v. Food Universe Marketplace	Paralegal User	0.17h	\$165.00	-	\$28.05
09/15/2022		Paralegal Fees - Alicia: Looking for witnesses ● Unbilled	00387-Acosta Acosta v. Food Universe Marketplace	Paralegal User	3.00h	\$165.00	-	\$495.00
08/30/2022		Paralegal Fees - Alicia: Call with Mrs. Elvira to let her know that she is going to be subpoenaed for deposition. ● Unbilled	00387-Acosta Acosta v. Food Universe Marketplace	Paralegal User	0.09h	\$165.00	-	\$14.85
04/07/2022		Paralegal Fees - Alicia: Call with client to request his phone records ● Unbilled	00387-Acosta Acosta v. Food Universe Marketplace	Paralegal User	0.09h	\$165.00	-	\$14.85
04/01/2022		Paralegal Fees - Alicia: Call with client ● Unbilled	00387-Acosta Acosta v. Food Universe Marketplace	Paralegal User	0.12h	\$165.00	-	\$19.80
03/30/2022		Paralegal Fees - Alicia: Call with client to talk about declarations ● Unbilled	00387-Acosta Acosta v. Food Universe Marketplace	Paralegal User	0.50h	\$165.00	-	\$82.50
03/02/2022		Paralegal Fees - Alicia: Meeting with client to help him to get messages screenshots. ● Unbilled	00387-Acosta Acosta v. Food Universe Marketplace	Paralegal User	0.70h	\$165.00	-	\$115.50
						12.23h	\$0.00	\$1,980.90
							0.00h	12.23h

Activities Export

02/08/2023
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Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
02/23/2022		Paralegal Fees - Alicia: Translation of new declaration and sending it out. ● Unbilled	00387-Acosta Acosta v. Food Universe Marketplace	Paralegal User	0.20h	\$165.00	-	\$33.00
02/23/2022		Paralegal Fees - Alicia: Call with client to update - Vin ● Unbilled	00387-Acosta Acosta v. Food Universe Marketplace	Paralegal User	0.25h	\$165.00	-	\$41.25
02/11/2022		Paralegal Fees - Alicia: Call with client about picture ● Unbilled	00387-Acosta Acosta v. Food Universe Marketplace	Paralegal User	0.10h	\$165.00	-	\$16.50
02/09/2022		Paralegal Fees - Alicia: Call with client about employees/managers info ● Unbilled	00387-Acosta Acosta v. Food Universe Marketplace	Paralegal User	0.50h	\$165.00	-	\$82.50
12/20/2021		Paralegal Fees - Alicia: Declaration translation and call with Mr Jose Cruz ● Unbilled	00387-Acosta Acosta v. Food Universe Marketplace	Paralegal User	0.30h	\$150.00	-	\$45.00
12/20/2021		Paralegal Fees - Alicia: Call with Elvira Curiel - Vincent ● Unbilled	00387-Acosta Acosta v. Food Universe Marketplace	Paralegal User	0.45h	\$150.00	-	\$67.50
12/06/2021		Paralegal Fees - Alicia: Call with client and Vin about the threatening call. ● Unbilled	00387-Acosta Acosta v. Food Universe Marketplace	Paralegal User	0.75h	\$150.00	-	\$112.50
11/12/2021		Paralegal Fees - Alicia: Retainer Translation ● Unbilled	00387-Acosta Acosta v. Food Universe Marketplace	Paralegal User	0.45h	\$150.00	-	\$67.50

12.23h

\$0.00
0.00h

\$1,980.90
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3/4

Activities Export

02/08/2023
4:07 PM

Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
09/29/2021	②	Paralegal Fees - Alicia: Call with client to ask about the owner. ● Unbilled	00387-Acosta Acosta v. Food Universe Marketplace	Paralegal User	0.12h	\$150.00	-	\$18.00
09/22/2021	③	Paralegal Fees - Alicia: Video call with the client. ● Unbilled	00387-Acosta Acosta v. Food Universe Marketplace	Paralegal User	0.40h	\$150.00	-	\$60.00
					12.23h		\$0.00 0.00h	\$1,980.90 12.23h

Maria Rojas

TimeEntry	DATE	Time	Paralegal	Notes
TimeEntry	9/20/2021	0.15	Paralegal Fees - Maria	Explained the retainer agreement to the client. The client signed the contract. Attorney Vincent asked a few additional questions to the client.
TimeEntry	10/11/2021	0.228	Paralegal Fees - Maria	Intake
TimeEntry	3/18/2022	0.132	Paralegal Fees - Maria	Call with Vin and the Client to talk about the text msgs he provided
TimeEntry	5/9/2022	0.174	Paralegal Fees - Maria	Phone call with Vin and Acosta to go over the interrogatories and documents request
TimeEntry	5/17/2022	0.042	Paralegal Fees - Maria	Called witnesses and asked for their address
TimeEntry	10/6/2022	0.048	Paralegal Fees - Maria	Informed the client that his deposition was adjourned for Oct 12
TimeEntry	10/11/2022	1	Paralegal Fees - Maria	Deposition Preparation - Acosta
TimeEntry	10/12/2022	7	Paralegal Fees - Maria	Attended Acosta's deposition
TimeEntry	10/13/2022	0.192	Paralegal Fees - Maria	Called the witnesses
TimeEntry	10/17/2022	0.024	Paralegal Fees - Maria	Client was informed that a settlement conference is taking place on Nov. 30, 2022
TimeEntry	10/20/2022	0.084	Paralegal Fees - Maria	Call with Nicolas - Supermarket witness
TimeEntry	10/24/2022	0.252	Paralegal Fees - Maria	Client reviewed Authorization for disclosure of health information.
TimeEntry	10/25/2022	1.5	Paralegal Fees - Maria	Attended the deposition of Jose Cruz
TimeEntry	10/27/2022	0.234	Paralegal Fees - Maria	Call with Narcesco Hernandez and mail sent to Mr Bauer with the information
TimeEntry	10/31/2022	0.114	Paralegal Fees - Maria	Signed and translated my declaration
TimeEntry	11/3/2022	4	Paralegal Fees - Maria	Attended the deposition of the supermarket owner and his witnesses.
TimeEntry	11/7/2022	3.5	Paralegal Fees - Maria	Went to the Bronx with Vincent Bauer to hand out flyers
TimeEntry	11/14/2022	0.18	Paralegal Fees - Maria	research on the defendant
TimeEntry	1/6/2023	0.018	Paralegal Fees - Maria	Call the client to provide an update
TimeEntry	1/18/2023	0.06	Paralegal Fees - Maria	Informed the client that of the settlement agreement and the terms of the pay out.
Total		18.932		

Nelson J. Lassalle Investigations
Licensed by the New York Department of State,
Division of Licensing Services



100 Lafayette Street, Suite 403
New York, NY 10013

917-991-1684
PiLassalle@gmail.com

INVOICE

Plaintiff's Name: *Jose Acosta*

Date	Start Time	Finish Time	# of Hours	Hourly Rate	Total	Description of Activity
11/21/22	9:00am	12:48pm	3.8	\$100	\$380.00	Attempted interview of Yanelly Zenon, interview of Alizay Justiniano
11/22/22	9:30am	12:12pm	2.7	\$100	\$270.00	Attempted interview of Yanelly Zenon
11/29/22	2:00pm	4:36pm	2.6	\$100	\$260.00	Photograph supermarket, upload and email photographs to attorney Vincent Bauer

Additional Expenses:

11/21/22 – Mileage – 34 miles @ \$.75 = \$25.50
 11/22/22 – Mileage – 32 miles @ \$.75 = \$24.00
 11/29/22 – Mileage – 12 miles @ \$.75 = \$9.00

Grand Total Due = \$968.50